

# Report to the 2010 Hawaii State Legislature:

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## **Pursuant to S.C.R. No. 87, S.D. 1 (2009)**

Urging the Hawaii Housing Finance and Development Corporation  
To Convene a Task Force to Review State and County  
Affordable Housing Approval Requirements and Procedures



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Pursuant to Senate Concurrent Resolution 87, S.D. 1  
Urging the Hawaii Housing Finance and Development Corporation to Convene a  
Task Force to Review State and County Affordable Housing  
Approval Requirements and Procedures**

Background

Senate Concurrent Resolution (SCR) No. 87, SD 1 requires the Hawaii Housing Finance and Development Corporation (HHFDC) to convene a task force to review state and county affordable housing approval requirements and procedures under Chapter 201H, Hawaii Revised Statutes. SCR 87, SD1 also requires that HHFDC consult with other state and county agencies, county legislative bodies, private developers, and nonprofit housing organizations regarding recommendations for core affordable housing approval procedures for the counties. Click on the following link to see the resolution text.

[http://www.capitol.hawaii.gov/session2009/Bills/SCR87\\_SD1\\_.pdf](http://www.capitol.hawaii.gov/session2009/Bills/SCR87_SD1_.pdf)

The housing development authority in Chapter 201H, HRS is rooted in Act 105, Session Laws of Hawaii 1970. Even back then, the Legislature recognized that there were multiple causes for the high cost of housing, including the cost added by government regulation. Under Chapter 201H, HRS, an affordable housing project (which is defined as a project that is primarily designed for lower income housing) may obtain exemptions from statutes, ordinances, and rules of any governmental agency related to planning, zoning, and construction standards that do not negatively affect the health and safety of the general public. Additionally, the County Councils and State Land Use Commission must approve, approve with modifications, or disapprove requested exemptions for affordable housing projects within 45 days. If no action is taken, the project is deemed approved.

Chapter 201H has been an effective development tool. Approximately 3,965 affordable housing units were authorized or built in the City and County of Honolulu.

The SCR 87 Task Force is comprised of directors and representatives from federal, state and county housing-related agencies. The agencies represented are the U.S. Department of Housing and Urban Development, U.S. Department of Agriculture – Rural Development, Department of Hawaiian Home Lands, Office of Hawaiian Affairs, Hawaii Housing Finance and Development Corporation, Hawaii Public Housing Authority, Department of Community Services (Honolulu), Office of Housing and Community Development (Hawaii), Kauai County Housing Agency, and Department of Housing and Human Concerns (Maui).

Survey of County 201H Coordinating Agencies

The Office of Housing and Community Development (Hawaii OHCD), Kauai County Housing Agency (Kauai CHA), Department of Housing and Human Concerns (Maui DHHC), and Department of Planning and Permitting (Honolulu DPP) serve as the County 201H Coordinating Agencies. If a 201H application is made to HHFDC, then HHFDC serves as the State 201H Coordinating Agency.

A survey of County/State 201H Coordinating Agencies was conducted to ascertain how 201H applications are reviewed and processed. The following summarizes the 201H process.

- Informal review. Honolulu DPP and Kauai CHA perform informal reviews to determine whether a project is eligible for processing under 201H.
- A housing project that is “**primarily designed** for lower income housing” may be processed under the provisions of 201H. In practice, this means that a majority or 51% of housing units are set-aside for lower income housing.  
Honolulu DPP and Kauai CHA have additional requirements:
  - Honolulu DPP requires that a project must have at least 50 units, or 20 units, if solely for lower-income households. At least 10% of the units are for households at 80% of the area median income (AMI) and 20% for households between 80% and 120% AMI. The developer should initiate consultations with affected community groups, including the Neighborhood Board.
  - Kauai CHA requires that 51% of the units must be workforce housing as defined in its Housing Policy.
- The 201H application requires submittal of supporting documentation.

Documentation required for:	Hawaii	Honolulu	Kauai	Maui	HHFDC
Site control	Yes	Yes	Yes	Yes	Yes
Site plan	No	Yes	Yes	Yes	Yes
Market analysis/study	No	Yes	Yes	No	Yes
Site analysis/feasibility study	No	Yes	Yes	No	Yes
Environmental/EA/EIS	Yes	Yes	Yes	Yes <sup>(a)</sup>	Yes <sup>(a)</sup>
Sewer/water approval	Yes	Yes	Yes	No <sup>(b)</sup>	No <sup>(b)</sup>
Project financing plan	No	Yes	Yes	No	Yes
Financing commitment	No	Yes (50%)	No	No	No
Development schedule	No	Yes	Yes	No	Yes
Preliminary plans/specs	No	Yes	Yes	Yes	Yes
List of requested exemptions	Yes	Yes	Yes	Yes	Yes
Community meeting	No	Yes	No <sup>(c)</sup>	No <sup>(c)</sup>	Yes
Other	Yes <sup>(d)</sup>	Yes <sup>(e)</sup>	No	Yes	Yes <sup>(e, f)</sup>

- (a) The environmental assessment may be processed concurrently with the 201H application. However, the applicant must provide an assessment of the effects of the proposed project upon the environment, agriculture, recreational, cultural, historic, scenic, flora and fauna, or other resources of the area.
- (b) Sewer and water approvals are not a requirement of the 201H application; however, capacity and availability should be known. The lack of water source is a reason for County Council denial of the application.
- (c) Not required but highly recommended.
- (d) Application checklist, summary sheet, certification and assurances, exhibits.

- (e) Developer/applicant experience.
  - (f) Comments from community or community groups; if project will cause displacement, a program of housing accommodation for displaced persons; eligible developer; application fee
- Copies of the 201H application and supporting documentation are submitted to the County 201H Coordinating Agency or HHFDC. Upon determining that the application is complete, the County 201H Coordinating Agency or HHFDC distributes copies of the 201H application to county and state line agencies (such as Planning, Fire, Police, Public Works, Water, Parks, Land and Natural Resources, Education, OHA, etc.) for concurrent review.

Honolulu DPP and HHFDC request that line agencies provide comments within 30 days; Maui DHHC requests for comments within 45 days. Kauai CHA has not yet determined a time limit for agency reviews. The Hawaii OHCD holds a joint meeting with applicable line agencies.

- Except for Maui, joint agency reviews are held to discuss the 201H application and resolve inter-agency concerns.
- The Hawaii OHCD and Maui DHHC serve as a “housing expeditor” which monitors and facilitates the review and processing of 201H projects. Kauai CHA serves as an informal “housing expeditor.”
- The average timeframe for review and the County 201H Coordinating Agency’s/ HHFDC’s recommendation of 201H applications to Council varies by project and county.
  - Reviews for **smaller, in-fill projects** which request minimal exemptions
    - Honolulu – 90 days provided the application is complete
    - Kauai – 60-90 days
    - Maui – 90 to 180 days
    - HHFDC – 90 days
  - **Larger projects** which require land use or zoning changes
    - Honolulu – 6 months to 2 years depending on complexity of issues
    - Kauai – 90 to 180 days
    - Maui – 6 to 12 months
    - HHFDC – 90 days

#### Survey of Housing Developers/Consultants

For-profit and nonprofit developers which utilize the 201H process, and their consultants, were asked for their perspective of the 201H process and requirements.

- Developers/consultants do not believe that the “different county review procedures, requiring different information, different forms, and a different approval order” pose a problem.

However, developers/consultants felt strongly that the **201H procedures should be clear, readily determinable, consistent, and predictable.**

- There was consensus among the developers/consultants that the following documents are not necessary.

Documentation that should <b>not</b> be required for 201H reviews:	
Market analysis/study <sup>1</sup>	The demand for affordable housing is obvious and well-documented. County role is to regulate and insure compliance to codes for health and safety.
Sewer/water approval	An indication of sewer and water capacity, availability, or problems is needed at this phase. Too early; these approvals are typically considered in the subdivision/building permit phases of development.
Financing commitment	Only Honolulu requires a 50% project financing commitment. This is premature. Project financing is often subject to the 201H approval. Lenders are very strident about financing and wanting all approvals before final commitment.

- The Hawaii OHCD, Kauai CHA, and Maui DHHC serve as the “**housing expeditors**” in the respective counties. Developers/consultants in those counties felt the “housing expeditors” provide a needed and beneficial role, particularly in coordinating agency reviews and facilitating communication between the 201H applicant and the County Council.

Some developers/consultants in Honolulu thought a “housing expeditor” could add value. Recommendations for a “housing expeditor” include (A) a team made up of one HHFDC/State representative and one County housing representative to review, coordinate and process affordable housing permits and (B) a housing staff person with sufficient knowledge and skills in housing to effectively guide the applications through the review process. The housing expeditor needs to be someone with enough organizational stature to command response and action. The expeditor can hold meetings among the various agencies to get their feedback all together and avoid duplication of reviews, and essentially act as an advocate to attain the exemptions.

- Developer/consultant suggestions for improving the 201H review process follow.
  - The 201H application packet could include an application form, submittal checklist, etc. similar to the 201H application packet for Honolulu or those used for Change in Zoning & SMA Major Permit applications on Maui.  
<http://honoluluodpp.org/downloadpdf/zoning/201hexemption.pdf>

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<sup>1</sup> The 201H Coordinating Agencies believe market studies are necessary to ascertain if the proposed housing project will meet the housing need and target group.

<http://www.co.maui.hi.us/documents/Planning/Forms/SMAmajor.pdf>  
<http://www.co.maui.hi.us/documents/Planning/Forms/cizone.pdf>

- Set a time limit for county agency reviews and recommendation to County Councils. The recommended time limits are evenly split between 45 days and 90 days. One suggested 120 days.  
(Note: Pursuant to Chapter 15-174, Hawaii Administrative Rules, a recommendation of approval or disapproval to the HHFDC Board should be made within 90 days.)
- Formulate an “affordable housing rapid response” team made up of: one representative from HHFDC, one representative from the Honolulu DPP, and one representative from each of the Counties of Hawaii, Kauai, and Maui. This “affordable housing rapid response” team would review all residential developments with an affordable housing component and help to streamline zoning and/or permit processing.
- Hold initial meetings with the developer to see if the project is feasible and what exemptions are even possible. (Note: Honolulu DPP and Kauai CHA have an informal review or pre-application process to determine eligibility under 201H.)
- There needs to be a better understanding by the agency processing the 201H application that 201H is for expediting and facilitating the development of affordable housing. The application typically seeks for design waivers and exemptions; review of detailed design drawings and full specifications is not appropriate at this phase. Time is money and the private sector cannot take over a year to obtain such approvals.
- There should be adequate notice and opportunity for the public to comment on the 201H application.

#### Recommendations for Core Affordable Housing Approval Procedures for the Counties.

- County review procedures need not be the same. However, county and state review **procedures should be clear, readily determinable, consistent, and predictable.** The state and counties should have a comprehensive 201H Application Packet that includes its purpose, description of what can be exempted, requirements, and procedures, including the review and approval process. The packet would include an application form, submittal checklist, etc. similar to the 201H application packet for Honolulu or those used for Change in Zoning and SMA Major Permit applications on Maui. A detailed list of specific exemptions should be provided, by citing section of the applicable code and alternative standard to be applied.
- **The intent of 201H is to facilitate the development of affordable housing** by providing for exemptions from planning, zoning, and construction standards that do not negatively affect the health and safety of the public, as well as an expedited approval process. **It is with this mindset that 201H applications should be processed.**

- The **“housing expeditors” in Hawaii, Kauai, and Maui provide a beneficial role** in facilitating communication between the 201H applicant and line agencies and the County Councils. **The role of “housing expeditors” or an “affordable housing rapid response team” to advocate for and facilitate 201H approvals in Honolulu should be pursued.**
- The County Council must approve, approve with modifications, or disapprove the 201H application within 45 days. As such, **early meetings with the community and Council members on the proposed housing project are essential.** The applicant along with sponsoring agencies, such as HHFDC, and/or the “housing expediter” should ensure that these meetings take place. Areas of support or unresolved issues should be identified so that Council members are able to make an informed decision on the proposed housing project. **Early meetings with reviewing agencies** are also important to flush out and resolve agency concerns.
- **County 201H Coordinating Agencies should establish a practical and reasonable time limit for making recommendations to the Council.** This could **range from 45 days to 90 days from receipt of a complete 201H application.** This is consistent with Chapter 15-174, HAR, which requires that a recommendation for approval or disapproval of a complete 201H application be made by HHFDC within 90 days.
- Most 201H Coordinating Agencies require the developer to provide a financing plan. Additionally, the Honolulu DPP requires a 50% financing commitment. The lenders are very strident about financing and wanting approvals before final commitment. As such, **the requirement to provide a 50% financing commitment is premature and should be eliminated.** Agencies could consider charging an application fee as a means for discouraging frivolous applications.